

HOUSE BILL 1136

11

01r0074

By: **Chair, Economic Matters Committee (By Request – Departmental – Labor,
Licensing and Regulation)**

Introduced and read first time: February 17, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Financial Institutions – Supervision and Reorganization**

3 FOR the purpose of requiring certain trust companies to pledge certain securities or a
4 certain surety bond to the Commissioner of Financial Regulation to defray the
5 costs of receivership; authorizing the Commissioner to determine the amount of
6 the securities or surety bond, subject to a certain maximum amount;
7 authorizing the Commissioner to reduce the pledged securities or surety bond to
8 cash to pay certain costs; establishing procedures for the conversion of a federal
9 mutual savings bank to a Maryland–chartered savings bank; authorizing the
10 Commissioner to take possession of a nondepository trust company if the
11 Commissioner determines that a certain emergency exists; providing that
12 certain expenses of the Commissioner related to the Commissioner’s possession
13 of a nondepository trust company shall be paid from the assets of the trust
14 company and the proceeds of the sale of certain bonds or payment on a certain
15 surety bond; authorizing the Commissioner to appoint certain individuals and
16 retain certain officers and employees as needed to carry out the receivership of a
17 nondepository trust company, and requiring that the salaries of those
18 individuals be paid out of the funds of the trust company, as well as the
19 proceeds of the sale of certain bonds or payment on a certain surety bond;
20 defining certain terms; and generally relating to the supervision of certain trust
21 companies and the reorganization of certain savings banks.

22 BY repealing and reenacting, with amendments,
23 Article – Financial Institutions
24 Section 3–101, 5–101, and 5–606
25 Annotated Code of Maryland
26 (2003 Replacement Volume and 2009 Supplement)

27 BY adding to
28 Article – Financial Institutions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 3–211.1, 4–701.1, 5–602.1, and 5–604.1
2 Annotated Code of Maryland
3 (2003 Replacement Volume and 2009 Supplement)

4 BY repealing and reenacting, without amendments,
5 Article – Financial Institutions
6 Section 5–601 and 5–602
7 Annotated Code of Maryland
8 (2003 Replacement Volume and 2009 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Financial Institutions**

12 3–101.

13 (a) In this title the following words have the meanings indicated.

14 (b) “Capital stock” includes both common and preferred stock of a
15 commercial bank.

16 (c) “Debt instrument” means any capital note, debenture, bond, or certificate
17 of beneficial interest issued by a commercial bank.

18 (d) “Inhabitants” means the population of a municipal area, as determined
19 by the latest federal or State census.

20 **(E) “NONDEPOSITORY TRUST COMPANY” MEANS A TRUST COMPANY**
21 **THAT IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.**

22 **[(e)] (F)** “State bank” means an institution that is incorporated under the
23 laws of this State as a bank.

24 **[(f)] (G)** “Trust company” means an institution that is incorporated under
25 the laws of this State as a trust company.

26 **3–211.1.**

27 **(A) (1) IN ADDITION TO THE MINIMUM CAPITAL REQUIREMENTS OF §**
28 **3–209 OF THIS SUBTITLE, A NONDEPOSITORY TRUST COMPANY SHALL PLEDGE**
29 **TO THE COMMISSIONER, FOR THE BENEFIT OF THE COMMISSIONER,**
30 **SECURITIES OR A SURETY BOND TO DEFRAY THE COSTS OF A RECEIVERSHIP OF**
31 **THE NONDEPOSITORY TRUST COMPANY IN THE EVENT IT SHOULD FAIL.**

1 **(2) THE AMOUNT OF THE SECURITIES OR SURETY BOND SHALL BE**
2 **DETERMINED BY THE COMMISSIONER IN AN AMOUNT THAT THE COMMISSIONER**
3 **DEEMS APPROPRIATE TO DEFRAY SUCH COSTS, BUT IN NO EVENT SHALL THE**
4 **AMOUNT EXCEED \$3,000,000.**

5 **(B) IN THE EVENT OF A RECEIVERSHIP OF A NONDEPOSITORY TRUST**
6 **COMPANY, THE COMMISSIONER MAY, WITHOUT REGARD TO ANY PRIORITIES,**
7 **PREFERENCES, OR ADVERSE CLAIMS, REDUCE THE PLEDGED SECURITIES OR**
8 **THE SURETY BOND TO CASH AND, AS SOON AS PRACTICABLE, USE THE CASH TO**
9 **DEFRAY THE COSTS ASSOCIATED WITH THE RECEIVERSHIP.**

10 **(C) (1) IF A NONDEPOSITORY TRUST COMPANY CHOOSES TO PLEDGE**
11 **SECURITIES TO SATISFY THE REQUIREMENT OF SUBSECTION (A) OF THIS**
12 **SECTION, THE SECURITIES SHALL BE HELD AT A DEPOSITORY INSTITUTION OR A**
13 **FEDERAL RESERVE BANK APPROVED BY THE COMMISSIONER.**

14 **(2) THE COMMISSIONER MAY SPECIFY THE TYPES OF SECURITIES**
15 **THAT MAY BE PLEDGED.**

16 **(3) ANY FEES ASSOCIATED WITH HOLDING SUCH SECURITIES**
17 **SHALL BE THE RESPONSIBILITY OF THE NONDEPOSITORY TRUST COMPANY.**

18 **(D) (1) IF A NONDEPOSITORY TRUST COMPANY CHOOSES TO**
19 **PURCHASE A SURETY BOND TO SATISFY THE REQUIREMENT OF SUBSECTION (A)**
20 **OF THIS SECTION, THE SURETY BOND SHALL BE ISSUED BY A BONDING**
21 **COMPANY THAT:**

22 **(I) IS APPROVED BY THE COMMISSIONER;**

23 **(II) IS AUTHORIZED TO DO BUSINESS IN THIS STATE; AND**

24 **(III) HAS A RATING IN ONE OF THE THREE HIGHEST GRADES**
25 **AS DETERMINED BY A NATIONAL RATING SERVICE.**

26 **(2) THE SURETY BOND SHALL BE IN A FORM APPROVED BY THE**
27 **COMMISSIONER.**

28 **(3) THE NONDEPOSITORY TRUST COMPANY MAY NOT OBTAIN A**
29 **SURETY BOND FROM ANY ENTITY IN WHICH IT HAS A FINANCIAL INTEREST.**

30 **4-701.1.**

31 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
32 **MEANINGS INDICATED.**

1 **(2) “CONVERTING INSTITUTION” MEANS A FEDERAL MUTUAL**
2 **SAVINGS BANK.**

3 **(3) “FEDERAL MUTUAL SAVINGS BANK” MEANS AN INSTITUTION**
4 **THAT:**

5 **(I) IS INCORPORATED UNDER FEDERAL LAW AS A SAVINGS**
6 **BANK; AND**

7 **(II) IS A MUTUAL ASSOCIATION.**

8 **(B) A CONVERTING INSTITUTION THAT IS LOCATED IN THIS STATE MAY**
9 **CONVERT INTO A SAVINGS BANK AS PROVIDED BY FEDERAL LAW AND THIS**
10 **SECTION.**

11 **(C) (1) THE CONVERTING INSTITUTION SHALL MEET THE**
12 **REQUIREMENTS OF THIS TITLE FOR THE INCORPORATION OF A SAVINGS BANK.**

13 **(2) THE PROCEDURES FOR INCORPORATION MAY BE MODIFIED**
14 **AS REQUIRED BY THE DIFFERENCE BETWEEN INCORPORATION AND**
15 **CONVERSION.**

16 **(3) IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE**
17 **COMMISSIONER, ANY INTERESTED PERSON MAY REQUEST THAT THE**
18 **COMMISSIONER CONDUCT A HEARING REGARDING THE CONVERSION.**

19 **(D) (1) THE BOARD OF DIRECTORS OF THE CONVERTING**
20 **INSTITUTION SHALL SIGN, ACKNOWLEDGE, AND FILE ARTICLES OF**
21 **INCORPORATION.**

22 **(2) THE ARTICLES OF INCORPORATION SHALL STATE THAT THE**
23 **CONVERSION HAS BEEN APPROVED BY THE MEMBERS OR BOARD OF DIRECTORS**
24 **IN THE MANNER REQUIRED BY SUBSECTION (E) OF THIS SECTION.**

25 **(E) THE CONVERSION SHALL BE APPROVED AT A MEETING CALLED FOR**
26 **THAT PURPOSE, BY THE AFFIRMATIVE VOTE OF:**

27 **(1) TWO-THIRDS OF THE MEMBERS OF THE CONVERTING**
28 **INSTITUTION, VOTING IN PERSON OR BY PROXY; OR**

29 **(2) IF THERE ARE NO MEMBERS, THE BOARD OF DIRECTORS OF**
30 **THE CONVERTING INSTITUTION.**

1 **(F) THE NEW SAVINGS BANK RESULTING FROM THE CONVERSION:**

2 **(1) SHALL BE CONSIDERED THE SAME BUSINESS AND**
3 **CORPORATE ENTITY AS THE CONVERTING INSTITUTION; AND**

4 **(2) EXCEPT AS LIMITED BY THIS ARTICLE OR BY ITS CHARTER OR**
5 **BYLAWS, HAS ALL OF THE RIGHTS, POWERS, AND DUTIES OF THE CONVERTING**
6 **INSTITUTION.**

7 **(G) THE CONVERTING INSTITUTION'S RIGHTS, FRANCHISES, AND**
8 **INTERESTS IN ANY PROPERTY BECOME THE PROPERTY OF THE NEW SAVINGS**
9 **BANK, SUBJECT TO THE LIABILITIES OF THE CONVERTING INSTITUTION THAT**
10 **EXIST AT THE TIME OF THE CONVERSION.**

11 **(H) UNLESS THIS CONSTRUCTION WOULD BE UNREASONABLE, ANY**
12 **REFERENCE TO THE CONVERTING INSTITUTION IN ANY WRITING, WHETHER**
13 **EXECUTED OR TAKING EFFECT BEFORE OR AFTER THE CONVERSION, SHALL BE**
14 **INTERPRETED AS A REFERENCE TO THE NEW SAVINGS BANK.**

15 **(I) IF A CONVERTING INSTITUTION HAS ASSETS OR ENGAGES IN**
16 **BUSINESS ACTIVITIES THAT DO NOT CONFORM TO THE LAW GOVERNING**
17 **SAVINGS BANKS, THE COMMISSIONER MAY ALLOW A REASONABLE TIME FOR**
18 **THE NEW SAVINGS BANK TO CONFORM TO THAT LAW.**

19 5-101.

20 (a) In this title the following words have the meanings indicated.

21 (b) "CAMELS" means the composite rating adopted by the federal Financial
22 Institutions Examination Council to evaluate the adequacy of capital, quality of
23 assets, capability of management, quality and level of earnings, adequacy of liquidity,
24 and sensitivity to market risk.

25 (c) "Capital stock" includes both common and preferred stock of a
26 commercial bank.

27 (d) "Examiner" means:

28 (1) The Commissioner; and

29 (2) An individual whom the Commissioner designates as examiner.

30 (e) "Federal banking authority" means, as the context requires:

31 (1) The Federal Deposit Insurance Corporation;

1 (2) The Federal Reserve Bank of Richmond; or

2 (3) Any other appropriate federal banking authority.

3 **(F) “NONDEPOSITORY TRUST COMPANY” MEANS A TRUST COMPANY**
4 **THAT IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.**

5 **[(f)] (G)** “Savings bank” means an institution that:

6 (1) Is incorporated under the laws of this State as a savings bank; and

7 (2) Engages only in the business of savings banking.

8 **[(g)] (H)** “Trust company” means an institution that is incorporated under
9 the laws of this State as a trust company.

10 5–601.

11 (a) The board of directors of any banking institution may place the banking
12 institution, including its property, records, and business, in the hands of the
13 Commissioner by posting on the front door of each banking office of the institution a
14 notice that states: “This institution is in the hands of the Maryland Commissioner of
15 Financial Regulation”.

16 (b) The banking institution immediately shall notify the Commissioner of its
17 action, and the Commissioner immediately shall take possession of the institution.

18 5–602.

19 (a) (1) If the Commissioner finds that the capital stock account of any
20 commercial bank is impaired because of a loss or for any other reason, the
21 Commissioner, by notice to the board of directors of the commercial bank, may require
22 the commercial bank to correct the impairment.

23 (2) If the commercial bank fails to correct the impairment within 3
24 months after the board receives the notice, the Commissioner may take possession of
25 the commercial bank, including its property, records, and business.

26 (b) (1) If the reserves of any commercial bank fall below the amount
27 required under this article:

28 (i) The commercial bank may not increase its loans or discounts
29 until the deficiency is corrected, except by discounting or buying drafts payable at
30 sight or on demand; and

31 (ii) The Commissioner, by notice to the board of directors of the
32 commercial bank, shall require the commercial bank to correct the deficiency.

1 (2) If the commercial bank fails to correct the deficiency within 30
2 days after the board receives the notice, the Commissioner may take possession of the
3 commercial bank, including its property, records, and business.

4 **5-602.1.**

5 (A) IN THIS SECTION, "INSOLVENT" MEANS:

6 (1) INCAPABLE OF MEETING THE DEMANDS OF CREDITORS; OR

7 (2) HAVING LIABILITIES THAT EXCEED ASSETS.

8 (B) NOTWITHSTANDING THE NOTICE AND TIMING REQUIREMENTS IN §
9 **5-602** OF THIS SUBTITLE, IF THE COMMISSIONER DETERMINES THAT AN
10 EMERGENCY EXISTS AS DESCRIBED IN SUBSECTION (C) OF THIS SECTION, THE
11 COMMISSIONER MAY TAKE IMMEDIATE POSSESSION OF A NONDEPOSITORY
12 TRUST COMPANY, INCLUDING ITS PROPERTY, RECORDS, AND BUSINESS, BY
13 POSTING ON THE FRONT DOOR OF EACH BANKING OFFICE OF THE INSTITUTION
14 A NOTICE THAT STATES: "THIS INSTITUTION IS IN THE HANDS OF THE
15 MARYLAND COMMISSIONER OF FINANCIAL REGULATION."

16 (C) THE COMMISSIONER MAY DETERMINE THAT AN EMERGENCY EXISTS
17 IF A NONDEPOSITORY TRUST COMPANY:

18 (1) IS CONDUCTING ITS BUSINESS IN AN UNLAWFUL OR UNSOUND
19 MANNER THAT MAY RESULT IN SERIOUS LOSSES TO ITS CUSTOMERS OR
20 CREDITORS;

21 (2) IS UNABLE TO CONTINUE NORMAL OPERATIONS;

22 (3) HAS OBSTRUCTED OR IMPEDED AN EXAMINATION PERMITTED
23 UNDER § **5-201** OF THIS TITLE WHERE THE COMMISSIONER HAS A REASONABLE
24 BASIS TO BELIEVE THAT THE NONDEPOSITORY TRUST COMPANY IS
25 CONDUCTING ITS BUSINESS IN AN UNLAWFUL OR UNSOUND MANNER THAT MAY
26 RESULT IN SERIOUS LOSSES TO ITS CUSTOMERS OR CREDITORS;

27 (4) HAS REFUSED TO ALLOW AN EXAMINATION AS PERMITTED
28 UNDER § **5-201** OF THIS TITLE; OR

29 (5) IS INSOLVENT.

30 **5-604.1.**

1 **ALL NECESSARY AND REASONABLE EXPENSES OF THE COMMISSIONER**
2 **RELATED TO THE COMMISSIONER'S POSSESSION OF A NONDEPOSITORY TRUST**
3 **COMPANY, INCLUDING COSTS ASSOCIATED WITH THE RECEIVERSHIP,**
4 **REORGANIZATION, OR LIQUIDATION OF THE NONDEPOSITORY TRUST COMPANY,**
5 **SHALL BE PAID TO THE COMMISSIONER FROM THE ASSETS OF THE**
6 **NONDEPOSITORY TRUST COMPANY, IN ADDITION TO THE PROCEEDS OF THE**
7 **SALE OF SECURITIES OR THE PAYMENT ON A BOND REQUIRED UNDER § 3-211.1**
8 **OF THIS ARTICLE.**

9 5-606.

10 (a) **(1)** The receiver may appoint any clerks needed to carry out the
11 receivership.

12 **(2)** The salaries of these clerks shall be paid out of the funds of the
13 banking institution.

14 **(B) (1) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE**
15 **RECEIVER OF A NONDEPOSITORY TRUST COMPANY MAY, AS NEEDED TO CARRY**
16 **OUT THE RECEIVERSHIP:**

17 **(I) APPOINT ANY CLERKS, AGENTS, COUNSEL, EMPLOYEES,**
18 **AND ASSISTANTS; AND**

19 **(II) RETAIN OFFICERS AND EMPLOYEES OF THE**
20 **NONDEPOSITORY TRUST COMPANY.**

21 **(2) THE SALARIES AND ALL OTHER EXPENSES OF THE**
22 **INDIVIDUALS SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL**
23 **BE PAID OUT OF THE FUNDS OF THE NONDEPOSITORY TRUST COMPANY, IN**
24 **ADDITION TO THE PROCEEDS OF THE SALE OF SECURITIES OR THE PAYMENT ON**
25 **A BOND REQUIRED UNDER § 3-211.1 OF THIS ARTICLE.**

26 **[(b)] (C)** The receiver may borrow money and, with the approval of the
27 court, pledge, mortgage, or encumber any of the institution's assets to:

28 (1) Pay the obligations of the institution;

29 (2) Pay dividends to the depositors or creditors of the institution; or

30 (3) Enable the institution to reopen or reorganize.

31 **[(c)] (D)** (1) The receiver shall file with the court, in the form that the
32 court requires, an itemized account of:

1 (i) All receipts, disbursements, and expenses; and

2 (ii) Any proposed distribution.

3 (2) The court shall accept the account to the same extent as if an
4 auditor of the court had prepared and filed the account.

5 **[(d)] (E)** (1) Except as provided in paragraph (2) of this subsection, the
6 receiver may not make any distribution until the court ratifies the receiver's account.

7 (2) With the approval of the court, the receiver may pay in full each
8 creditor whose total claims do not exceed \$5.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2010.